



STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
401 Church Street  
L&C Annex 6th Floor  
Nashville, TN 37243-1534

May 13, 2008

Mr. Robert L. Mohny, Registered Agent  
10627 Deerbrook Drive  
Knoxville, Tennessee 37922

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**RECEIPT #7099 3400 0014 0970 4780**

Subject: DIRECTOR'S ORDER NO. WPC08-0076  
RUSHLAND PARK SUBDIVISION  
KNOX COUNTY, TENNESSEE

Dear Mr. Mohny:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Paulette Barton at (615) 532-0683.

Sincerely,

Patrick Parker, Manager  
Enforcement and Compliance Section

PNP:BPB

cc: DWPC – EFO-Knoxville  
DWPC – Compliance File  
OGC

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

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<b>IN THE MATTER OF:</b>	)	
	)	
<b>SADDLEBROOK DEVELOPMENT, LLC</b>	)	<b>DIVISION OF WATER</b>
<b>and</b>	)	<b>POLLUTION CONTROL</b>
<b>SADDLEBROOK HOMES, LLC</b>	)	
	)	
<b>RESPONDENTS</b>	)	<b>CASE NUMBER WPC08-0076</b>
	)	

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**DIRECTOR'S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed director of the Tennessee Division of Water Pollution Control (hereinafter the "director" and the "division" respectively) by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "commissioner" and the "department" respectively).

**II.**

Saddlebrook Development, LLC (hereinafter "Respondent SB Development") is an active limited liability company licensed to conduct business in the State of Tennessee and is the owner/developer of a residential subdivision described as Rushland Park, located at Millertown Pike west of Harris Road in Knox County (hereinafter the "site"). Service of process may be made on Respondent SB Development through its Registered Agent, Robert L. Mohny at 10627 Deerbrook Drive, Knoxville, Tennessee 37922.

### III.

Saddlebrook Homes, LLC (hereinafter “Respondent SB Homes”) is an active limited liability company licensed to conduct business in the State of Tennessee and is contracted by Respondent SB Development to conduct construction activities at the site. Service of process may be made on Respondent Homes through its Registered Agent, Robert L. Mohny at 10627 Deerbrook Drive, Knoxville, Tennessee 37922.

### JURISDICTION

### IV.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (the “Act”) has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

### V.

The Respondents are “persons” as defined by T.C.A. §69-3-103(20) and as herein described, the Respondents have violated the Act.

## VI.

T.C.A. §69-3-108 requires a person to obtain coverage under a permit prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substances will move into waters of the state. Coverage under the Tennessee Construction General Permit for Storm Water Discharges Associated with Construction Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI), a site-specific Storm Water Pollution Prevention Plan (SWPPP), and appropriate fee.

## VII.

Pursuant to T.C.A. §69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (ARAP) that is not governed by a general permit or a §401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

## VIII.

The unnamed tributary to Woods Creek, referred to herein, is “waters of the state” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

## **FACTS**

### **IX.**

On January 12, 2005, Respondent SB Development submitted a NOI, SWPPP, and appropriate fee requesting TNCGP coverage for construction activities at the site. Respondent SB Development was issued TNCGP coverage on January 27, 2005, which expires on May 30, 2010, and was assigned tracking number TNR131177.

### **X.**

On August 20, 2007, Respondent SB Development submitted an updated NOI adding Respondent SB Homes as the contractor for construction activities of Phase III at the site. The division reviewed the NOI upon receipt and approved it.

### **XI.**

On March 11, 2008, the division received, via e-mail, a complaint regarding the pumping of stormwater from a sediment basin at the site. The photographs accompanying the complaint showed that the contents of a sediment basin had been pumped out and the sediment-laden discharge had caused a color contrast in the unnamed tributary to Woods Creek, in violation of the TNCGP.

### **XII.**

On March 20, 2008, the division issued a Notice of Violation (NOV) to Respondent SB Development for the violation noted in the March 11, 2008, photographs. Respondent SB Development was instructed to treat the contents of the sediment basin with a flocculent prior to discharge as instructed in the revised SWPPP. Respondent SB Development was further

instructed to submit, within 14 days of receipt of the NOV, a written response to the division detailing the corrective measures implemented to maintain compliance with the SWPPP.

### **XIII.**

During the course of this investigation, the division incurred damages in the amount of EIGHTY THREE DOLLARS AND TWENTY FOUR CENTS (\$83.24).

## **VIOLATIONS**

### **XIV.**

By failing to comply with the terms and conditions of the TNCGP as described herein, the Respondents have violated T.C.A. Sections §69-3-108(b) and 69-3-114(b):

T.C.A. §69-3-108(b) states, in part:

(b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

T.C.A. §69-3-114(b) states:

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108;

or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

### **ORDER AND ASSESSMENT**

#### **XV.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following Order and Assessment to the Respondents.

1. The Respondents shall treat the contents of the sediment basin with a flocculent prior to discharge in accordance with the revised SWPPP.
2. The Respondents shall maintain records of all maintenance activities implemented at the sediment basin and shall submit a report monthly detailing these measures until all land disturbance activities are complete and erosion-preventive permanent cover is established. The report shall be submitted to the Water Pollution Control Manager at the KEFO at 3711 Middlebrook Pike, Knoxville, Tennessee 27921.
3. The Respondents shall pay a CIVIL PENALTY of THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500.00) to the division, hereby ASSESSED to be paid as follows:
  - a. The Respondents shall, within 30 days of receipt of this Order and Assessment, pay a CIVIL PENALTY in the amount of ONE THOUSAND DOLLARS (\$1,000.00).
  - b. If the Respondents fail to comply with Part XV, item 1 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of ONE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$1,250.00), payable within 30 days of default.

- c. If the Respondents fail to comply with Part XV, item 2 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of ONE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$1,250.00), payable within 30 days of default.
- 4. The Respondents shall pay DAMAGES to the division in the amount of EIGHTY THREE DOLLARS AND TWENTY FOUR CENTS (\$83.24).

The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondents shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondents are advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondents in the future.



Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 13<sup>th</sup> day of May 2008.

A handwritten signature in black ink, appearing to read "Paul E. Davis", is written over a horizontal line.

Paul E. Davis, P.E.  
Director, Division of Water Pollution Control

#### **NOTICE OF RIGHTS**

Tennessee Code Annotated §§69-3-109, 115 allow the Respondent to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file a written petition setting forth each Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within THIRTY (30) DAYS of receiving this Order and Assessment.

If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a

trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization. It is the Department's position that corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the state of Tennessee.

At the conclusion of a hearing the Board has the authority to affirm or modify, or deny the Order and Assessment. This includes the authority to modify the penalty within the statutory confines.

Furthermore, in the event the Board finds that the Respondent is responsible for the alleged violations after a hearing, the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of an administrative law judge and a court reporter.

Any petition to appeal which is filed should be sent to Appeal of an Enforcement Order, TDEC-OGC, 20<sup>th</sup> Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548. Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14<sup>th</sup> Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution

Control, Tennessee Department of Environment and Conservation, 6th Floor Annex, 401 Church Street, Nashville, Tennessee 37243. The case number should be written on all correspondence regarding this matter.